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James A. Byrne U.S. Courthouse  
Via videoconference  
Philadelphia, PA 19106  
December 4, 2020  
Commencing at 10:04 a.m.

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Proceedings taken stenographically and prepared utilizing  
computer-aided transcription

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1 (Court called to order at 10:04 a.m.)

2 THE COURT: Good morning.

3 So I called this hearing to address sanctions issues.  
4 I have issued a series of orders through the course of the last  
5 six or seven weeks in this case, and I want to get a handle on  
6 compliance with those orders, and also talk about big picture  
7 where things stand, and then try to sort out what, if any,  
8 remedies are appropriate.

9 So I want to start with this. Mr. Carson, on November  
10 the 17th, I issued an order to show cause concerning sanctions  
11 in the case. And I laid out sanctions that I was considering.  
12 It's Document 77 on the docket.

13 I laid out the sanctions I was considering, and I  
14 required responses by November the 20th. And you never  
15 responded to that order.

16 So just on its face, why shouldn't I just enter the  
17 sanctions that I laid out in that order to show cause given the  
18 lack of a response?

19 I can't hear you, Mr. Carson.

20 MR. CARSON: Can you hear me now?

21 THE COURT: Yes.

22 MR. CARSON: So the first thing is, is that I did file  
23 a motion for reconsideration on the order.

24 When that order came out, it was in the midst of doing  
25 I guess depositions, and I just fell behind on my email and I

1 just -- on my emails and I didn't see the -- I didn't see the  
2 deadline.

3 And I -- you know what I mean? I'm just working on  
4 this case alone, and ultimately, I filed a motion for  
5 reconsideration.

6 And I think it's pretty clear that based on just the  
7 facts, that there hasn't been any discovery violations in this  
8 case, not one.

9 THE COURT: I'm not -- we're not there yet. Okay?

10 I'm troubled, Mr. Carson, because -- I don't  
11 understand the explanation that -- I mean, I understand falling  
12 behind on your emails, but when courts issue orders, you need  
13 to read the orders. And when courts impose deadlines, you need  
14 to comply with the deadlines.

15 I presume you saw that there was a filing from the  
16 defendants in response to my order to show cause, which I think  
17 was Document 80 on the docket.

18 I just don't understand how when an order to show  
19 cause comes out, it can just go unnoticed. That, frankly,  
20 doesn't make a lot of sense to me.

21 And it -- you couple that with the fact that -- and I  
22 want to be clear, your motion for reconsideration is not  
23 directed at the issue that led to my order to show cause.

24 So my order to show cause was triggered by the fact  
25 that on November 13th I issued an order. That's the order to

1 which your motion is directed.

2 But your motion is directed to the portion of that or  
3 two portions of that order: One that deals with text message  
4 production and one that deals with an award of attorney fees.

5 What it's not directed at and also what it doesn't  
6 address, Mr. Carson, is the fact that on November 13th, my  
7 order said that you needed to start providing me with daily  
8 updates on your progress on doing document review. And I  
9 didn't get any updates from you. Not a single one. Right?

10 And so then I issue an order to show cause saying you  
11 haven't complied with my order. And I still didn't get any  
12 updates from you.

13 So -- and I know that you didn't just miss that  
14 obligation, because it wasn't just something that popped up in  
15 an email or in an ECF notice, it's something we went over on  
16 the record in a hearing.

17 So you didn't comply with that order either. And then  
18 that's what led to my order to show cause.

19 So why weren't you complying with my order?

20 MR. CARSON: Well, I think that my motion for  
21 reconsideration does address that. It does address the images  
22 too. So --

23 THE COURT: It doesn't -- no. It addresses your  
24 efforts to produce the images, Mr. Carson. Okay? And we'll  
25 talk about that.

1           But it doesn't address the fact that on November 13th  
2 I issued an order. The order says, okay -- and we talked about  
3 this, as I said, on the record. It says, "It is FURTHER  
4 ORDERED" -- and this is Document 74 on the docket. "It is  
5 FURTHER ORDERED that starting today, and every day thereafter,  
6 Plaintiff's Counsel shall submit a daily status report to the  
7 Court via email to" Chambers of -- to the email address,  
8 Chambers of Judge Wolson, "that sets forth the following  
9 information: 1) how many documents you reviewed that day; 2)  
10 how many documents were produced that day; and 3) how much time  
11 he spent reviewing and/or producing documents that day."

12           You didn't submit a status report on the 13th, right,  
13 which is the date of the order. You didn't submit a status  
14 report over that weekend. You didn't submit a status report  
15 the following Monday. I issued an order to show cause. And  
16 you continued not to issue status reports.

17           You knew that that order was there. Right?

18           And your reconsideration order doesn't say I should  
19 never have to submit daily status reports, does it?

20           MR. CARSON: It doesn't say that.

21           THE COURT: And you didn't comply with my order.  
22 Right?

23           MR. CARSON: I did not send you daily status reports.

24           THE COURT: So why didn't you comply with my order?

25           MR. CARSON: I mean, because I'm not represented by

1 anyone today, just -- what I will -- I don't know what I feel  
2 feeling comfortable saying.

3 But what I would say is it was not -- it was not  
4 because I read your order and chose not to comply. That is not  
5 what happened, Your Honor. It just isn't.

6 THE COURT: Whether you read it and chose not to  
7 comply or didn't pay attention to it -- I mean, again, this  
8 didn't come out of nowhere, Mr. Carson. This is something that  
9 I raised with you on -- I mean, the order was November 13th,  
10 but there was a hearing November 13th, right, that the order  
11 came from.

12 And at the end of that hearing, I took a break, and  
13 then I came back and I read to you into the record what I  
14 wanted to do. And I told you that I wanted you to provide  
15 these emails updates, these daily updates. Right?

16 So I'm just befuddled at the idea that I told you and  
17 then I issued an order telling you to do it, requiring you to  
18 do it, and you just didn't do it.

19 So I don't know whether that is I consciously chose  
20 not to do it or what other way you would describe it, but at  
21 some level you disregarded my order. And then you disregarded  
22 the order to show cause saying, hey, I really meant it.

23 Tell me why you're not complying.

24 MR. CARSON: Your Honor, I guess what I just want you  
25 to know is I absolutely did not just disregard your order

1 consciously. The entire time I was working diligently on  
2 trying to figure out what to do with these images.

3 I think that, you know, there's a lot of evidence to  
4 demonstrate that of the date of that hearing, which was a  
5 Friday morning, until the present, you know, my entire practice  
6 has been trying to figure out what to do with these images.  
7 You know, there's a lot of them, and I thought that I was  
8 complying with the order by putting that much time and effort  
9 into working on the images.

10 THE COURT: I don't know how you could have thought  
11 you were complying with the order. Yes, I wanted you to do the  
12 work, Mr. Carson, but I wanted you to tell me what was going  
13 on. And the reason I wanted to do that was, A, so I made sure  
14 there was progress being made, and B, to give me an opportunity  
15 to be involved if there was something I needed to be involved  
16 with as we were coming up on the discovery cutoff.

17 Instead, I didn't hear from you basically until  
18 discovery ended. You sent me an update at the time that you  
19 filed your motion for reconsideration, and that was, you know,  
20 the evening of the 25th, which was the day of the discovery  
21 cutoff.

22 MR. CARSON: And then I sent a few updates after that.

23 THE COURT: And you sent updates after that. But you  
24 didn't send updates during the discovery period, which is  
25 expressly what I ordered you to do.



1           And the fact that you didn't do it, you didn't comply  
2 with that requirement and then you didn't respond to the order  
3 to show cause, just tells me that you're not really paying  
4 attention.

5           You may think you're complying with the spirit of what  
6 I'm trying to do, but that's not how court orders work. You  
7 don't get to divine what the spirit of the order is and then  
8 try to comply with that. You've got to comply with what I  
9 said. And if there's some reason you can't comply, you've got  
10 to tell me that, not just ignore it. That's how it's got to  
11 work.

12           And it's not how it worked here. And that's the first  
13 reason that, you know, we're having this hearing, is because  
14 I'm looking at this docket and I see a consistent disregard of  
15 my orders.

16           I'll give you a chance, Mr. Carson, on this particular  
17 issue. Tell me why that's not sanctionable conduct.

18           MR. CARSON: Yes. What I would suggest is that there  
19 is no -- there's -- I mean, first, I don't think there's been  
20 any prejudice to defendants in any way because I didn't send  
21 those updates.

22           I know that the order -- I understand that -- today  
23 that that's what the order says, but, you know, there's no way  
24 that anyone could have gotten through the images that were --  
25 that I was ordered to go through faster than what I've done. I

1 mean, it just wouldn't be possible.

2 THE COURT: I'm not interested yet -- we're going to  
3 get to the images. I'm not interested yet in the images.

4 And I hear your prejudice argument, Mr. Carson. But  
5 I've got to tell you that there's a concern that from my end is  
6 bigger than the question of prejudice to the defendants and  
7 frankly is bigger than the prosecution of this case. Right?  
8 It strikes fundamentally at the justice system and at the  
9 system of law.

10 When judges issue orders, they have to be complied  
11 with and the parties are not just free to disregard them. You  
12 can come back to me, and if there's a problem with compliance,  
13 you can tell me and we can talk about that. But you cannot  
14 come back to me and just say later, well, it didn't hurt  
15 anybody so I didn't really have to comply. That's not how our  
16 system has to work. Our system has to work in a way that there  
17 is compliance.

18 And again, here what I was asking for, right now what  
19 we're talking about, what led to the order to show cause and  
20 then subsequently to this hearing is in no small part the  
21 simple lack of daily updates. Okay?

22 And I don't care what you say about the challenge of  
23 reviewing the documents or anything else. All the things that  
24 you tell me now that you were doing for the last three or four  
25 weeks and all of the things that you reported to me in the

1 status update on the 25th that you provided, those are things  
2 that I should have been hearing along the way. Right? That  
3 was the express purpose of requiring the daily updates.

4 So if you had said to me in a daily update, I haven't  
5 reviewed any documents today but I've been on the phone with  
6 Cornerstone exploring ways to speed up the review of images,  
7 for example, that would have been an update that would have  
8 been useful to me and meaningful and in compliance with my  
9 order. Okay?

10 But you deprived me of that information. You ignored  
11 a court order. And so just regardless of prejudice, I think  
12 that there's a bigger issue, as I said. And that is that I  
13 need to know that when I issue an order, you're going to comply  
14 with it.

15 MR. CARSON: Your Honor, can I tell you something else  
16 that might be relevant?

17 THE COURT: Yeah.

18 MR. CARSON: So the paralegal I work with today, his  
19 name is Jason.

20 Jason, he works with two lawyers here, and the other  
21 lawyer is Erica Shikunov. And Erica Shikunov has a case that  
22 she's litigating against the Middle East Forum.

23 So like we've tried to I guess put up like a wall  
24 between us, just so that we can say that, you know, like, we're  
25 not sharing information behind -- I mean, like that everything

1 is being done as if we were like two different firms.

2 And so part of that was that Jason would only work on  
3 Erica's case.

4 So he's the person I sort of always relied to, when  
5 like orders come through, to like talk about those orders. And  
6 I didn't realize because of this wall he was just not telling  
7 me about orders from -- in this case, like he was sort of just  
8 disregarding them. And I think he thought he was doing the  
9 right thing by doing that, but at the same time, you know what  
10 I mean, that's one of the reasons I didn't see the orders.

11 THE COURT: So I have two reactions to that,  
12 Mr. Carson.

13 One is I get what you're saying, but, you know, the  
14 issue is ultimately yours.

15 MR. CARSON: Yeah, I understand that.

16 THE COURT: It's not your paralegal's. Right?

17 Secondly, though, I come back to, you know, this issue  
18 of the daily reports. Okay?

19 Set aside the order to show cause for a second. You  
20 say you missed that in the email stream. I mean, again, I  
21 understand maybe not seeing it as it came in, but at some point  
22 your practice has to be that you're looking at things that have  
23 an ECF email address because that's how courts issue orders in  
24 this day and age. And you know in this particular case that,  
25 A, I've been actively involved over the last six or seven

1 weeks, and B, that you're coming up on the discovery cutoff.

2 But even beyond that, okay, again, I'm looking at the  
3 transcript now from November 13. And November 13th is the  
4 hearing that leads to the order.

5 And I said on the record, okay, I said, the last  
6 thing, Mr. Carson, once I get a report from Cornerstone, I  
7 said, it may be that there's not much left to review once the  
8 attachments are produced, but to the extent that there are  
9 still media files that need to be produced, I want to see daily  
10 updates on the progress of the that. And I want those by email  
11 to my Chambers.

12 So I'm going to get a report from you on Monday about  
13 what's out there.

14 Hopefully what you can tell me is both what's out  
15 there in the way of media files but also how many of them are  
16 attachments that are going to be produced and what's going to  
17 be left for review.

18 And you say to me, how am I going to get you that  
19 information?

20 And I say, you're going to email me to the Chambers  
21 account, Mr. Carson. You're going to copy counsel on the case  
22 how many files you've reviewed on a daily basis so that I have  
23 information about the progress that's being made. I want to  
24 know the files that have been reviewed and the amount of time  
25 that's spent reviewing them on a daily basis. And you're going

1 to send emails to my Chambers account telling me that.

2 This wasn't just an order. This wasn't something that  
3 a paralegal had to see and alert you to. This is something you  
4 and I had a direct dialogue about.

5 And --

6 MR. CARSON: And the parties did email a status update  
7 that following week. Right?

8 THE COURT: Yeah, I got a status update, which is a  
9 separate requirement. But I told you I wanted daily updates.  
10 The exchange we just had that I read to you was for daily  
11 updates. And I didn't get them. Right?

12 And that's not on your paralegal. None of this is on  
13 your paralegal.

14 MR. CARSON: No. I don't put any of it -- I wasn't  
15 suggesting it was his fault. But like the reason why -- the  
16 way that I just found out about that, that like -- was  
17 absolutely because of this hearing. You know, the hearing was  
18 something I just knew, you know, that I had this Friday on my  
19 mind.

20 So the other -- I think it was yesterday, actually, or  
21 might have been the day before when I looked at my calendar and  
22 I didn't see the hearing on my calendar, I was like, you know,  
23 what the heck, why isn't -- you know, that's an important  
24 hearing. If I didn't remember it, that could be a real  
25 problem.

1           So I went to say something to Jason about it, and  
2   that's when I just found out he wasn't putting things on my  
3   calendar for any MEF case. So I didn't know that was  
4   happening.

5           THE COURT: But again, it doesn't matter. You and I  
6   had conversation about it. And I'm pretty sure you ordered the  
7   transcript. I'm pretty sure I saw that.

8           MR. CARSON: I have a transcript.

9           THE COURT: So you knew it was a requirement that I  
10   imposed. Regardless -- maybe you forgot, but there was a point  
11   in time where you knew that that was a requirement that I  
12   imposed, and you didn't comply with it.

13          MR. CARSON: I was at the hearing.

14          THE COURT: There's no question about that.

15          I don't know yet -- and we'll go through some other  
16   stuff today and then I'll figure out what the remedy is for  
17   that, but it's clear to me on the record that you knew about my  
18   orders. And frankly, to the extent you didn't know about the  
19   order requiring the response to the order to show cause, that's  
20   more than just negligence from my perspective.

21          You get ECF notices from a court, you've got to look  
22   at them. It's kind of basic.

23          And, you know, so whether you had actual knowledge or  
24   just constructive knowledge of that requirement, I don't know.  
25   I don't have to decide whether you actually read the order.

1 The purpose of giving ECF notices is so that you have  
2 constructive knowledge. And you didn't, and you didn't respond  
3 to the order to show cause.

4 Let me ask then, you know, there's some other issues  
5 that are raised in the defendants' submission in response to  
6 the order to show cause and that also seem to suggest that  
7 there was noncompliance with my order, at least my November  
8 13th order. And we'll get into some of the early orders as we  
9 go through today.

10 So I'm going to come back to the text messages in a  
11 minute.

12 Attachments. There was an order that you produce  
13 attachments with metadata for previously produced documents and  
14 that that had to be done by November 18th.

15 Did that happen?

16 MR. CARSON: The order -- the order was I had to  
17 authorize Cornerstone to do it.

18 THE COURT: It's ultimately your job to make a  
19 production. Cornerstone is not some independent party here.

20 MR. CARSON: They're the only party with the metadata,  
21 Your Honor. They're the only people that have it.

22 THE COURT: What did you do to make sure Cornerstone  
23 made the production?

24 MR. CARSON: I contacted them and told them to produce  
25 it.



1 THE COURT: Did you follow up to see if they produced  
2 it?

3 MR. CARSON: They refused to produce it. They will  
4 not produce that information in this case. They will not do  
5 it.

6 THE COURT: So we'll get to that in a minute.

7 Did you -- there's discussion in the report that you  
8 were, I would say, not terribly involved in the discussions  
9 with Cornerstone on the 13th, and then on the 17th -- that you  
10 didn't talk to them at all on the 13th because you had another  
11 deposition going on, and then on the 17th you were on for about  
12 ten minutes and then hung up and then left the Cozen lawyers --  
13 and I have to look and see whether Mr. Gold or his colleagues  
14 were also on, but left the defense lawyers to talk to  
15 Cornerstone alone; is that right?

16 MR. CARSON: Yes and no. I wasn't invited to the call  
17 on the 13th. That's wasn't a call -- that was just a call that  
18 those guys had with Cornerstone without me. It wasn't set up  
19 to be a conference call.

20 THE COURT: I have an email here where Mr. Walton  
21 emails you and says -- and two people from Cornerstone asking  
22 to speak as soon as possible.

23 And you wrote back, saying, I don't think I'll be able  
24 to talk until Monday. Right?

25 Mr. Walton says, we really need to discuss it today.

1 And so then they went ahead without you because you weren't  
2 available.

3 MR. CARSON: I was in a deposition that whole day.

4 THE COURT: Right. You told me that at the hearing,  
5 and I told you that I still needed you to find a way to make  
6 yourself available to have conversations. Right?

7 MR. CARSON: Yeah, by Monday. And we did have a  
8 conversation by Monday.

9 THE COURT: Okay. And on Monday how long were you on  
10 the phone with Cornerstone?

11 MR. CARSON: 15 minutes.

12 THE COURT: The call continued. Why didn't you stay  
13 on?

14 MR. CARSON: We all agreed that I had provided enough  
15 information, that Dave was -- I mean, it wasn't that everyone  
16 was asking me to stay on. I got on the call, we had a  
17 conversation, we talked about everything, I told Cornerstone  
18 that they were a totally -- had my authorization to finish  
19 talking to Dave, if Dave had a lot more questions. And Dave  
20 decided to stay on because had more questions and stayed on to  
21 talk to them.

22 I was part of the call, and we did talk about  
23 everything. And he did explain exactly what the issues were  
24 during that call, and I did respond to it all.

25 THE COURT: Did you give to the defendants or propose

1 a schedule for producing text messages at that time?

2 MR. CARSON: Did I do what?

3 THE COURT: Give them a proposed schedule for  
4 production of text messages that I ordered?

5 MR. CARSON: I don't even -- no. But they didn't  
6 provide -- by the time that that conversation happened, I don't  
7 think I even had the list of text messages I had to provide  
8 yet.

9 THE COURT: Set aside that conversation. Okay?

10 So my order of November 13th, Mr. Carson, said that  
11 there was some intermediate deadlines because I wanted things  
12 to move. Right?

13 And then what I said was -- pull up the order again.

14 So we talked about the production of documents -- of  
15 attachments. You said Cornerstone refused to do that.

16 Then I said you were to provide to me a status report  
17 with regard to a schedule for producing text messages pursuant  
18 to the requirements that I had already ordered.

19 MR. CARSON: We did that.

20 THE COURT: They gave you a list of text  
21 conversations. Right?

22 MR. CARSON: Yeah.

23 THE COURT: And you were supposed to provide them with  
24 a schedule to get them produced.

25 They did ultimately give you a list. Right?

1           MR. CARSON: Yeah. There was about 578 threads on the  
2 list.

3           THE COURT: What did you do to give them a schedule to  
4 produce?

5           MR. CARSON: Your Honor, the only people with those  
6 text messages is Cornerstone. The only people in the world  
7 that have those text messages are Cornerstone. There's nobody  
8 else in the world. Lisa doesn't have them. I don't have them.

9           I talked -- I had plenty of conversations -- me and  
10 Dave Walton have been -- were in direct communication that  
11 entire time. We had several conversations on the telephone.  
12 We traded electronic communications. And I responded to it  
13 all.

14           And we sat on the phone, and I tried -- like he had --  
15 we pulled up the list together that they gave me, the entire --  
16 the entire Excel spreadsheet. And I sat there and tried to  
17 figure out with him on the phone whether or not I could respond  
18 to it.

19           And I explained to him, there's no way I could do it.  
20 I don't even have these text messages.

21           THE COURT: I'm going to shift gears a little, go a  
22 little out of my planned order then, because I keep hearing  
23 Cornerstone, Mr. Carson. I've heard it throughout the case.  
24 You invoke Cornerstone. They have the data, they're the ones  
25 who have to produce, they refuse to do things. Okay?

1           And then I got this status update from the parties in  
2   which I was told, well, Cornerstone hasn't been retained in  
3   this case. Is that right?

4           MR. CARSON: I guess that's what the status update  
5   says.

6           THE COURT: Is that right? Did you retain Cornerstone  
7   in this case?

8           MR. CARSON: No. Defendants are paying for  
9   Cornerstone.

10          THE COURT: In this case or in the trade secret case?

11          MR. CARSON: Just period. They're covering all the  
12   bills for Cornerstone. I have not been -- and that was part of  
13   an agreement, because we -- frankly, plaintiff couldn't afford  
14   it.

15          THE COURT: I thought Cornerstone -- the report I got  
16   was that Cornerstone had only been engaged pursuant to Judge  
17   Sanchez's order in the trade secret case. Is that right,  
18   Mr. Carson?

19          MR. CARSON: That's what Cornerstone's position is, is  
20   that they can't do discovery -- they're fine with producing  
21   discovery as long as it's in -- as long as it's parallel to  
22   what they're doing in the other case.

23          THE COURT: I assume there's some engagement letter  
24   with Cornerstone somewhere. Right?

25          MR. CARSON: Not -- I don't have one.

1 THE COURT: There's no agreement with Cornerstone to  
2 be hired?

3 MR. CARSON: Not between --

4 THE COURT: You don't have any kind of contractual  
5 terms?

6 MR. CARSON: No, not -- I don't have one, no.

7 THE COURT: Mr. Gold, you're in the trade secret case.  
8 Is there an engagement letter with Cornerstone?

9 MR. GOLD: To my recollection there is, Your Honor.  
10 However, it is strictly related to the trade secret case.

11 And Cornerstone is not a vendor of the -- of the  
12 Middle East Forum. Cornerstone is a neutral party that was  
13 brought in to kind of facilitate the discovery in the trade  
14 secret case.

15 However, the Forum was paying Cornerstone, but  
16 Cornerstone was never retained in this case, to either be our  
17 expert, nor was Cornerstone ever retained to be Mr. Carson's  
18 expert. So --

19 And Cornerstone is limited in terms of the information  
20 it can disclose or the data it can produce by virtue of Judge  
21 Sanchez's order, who, by the way, kept Cornerstone as a neutral  
22 party. And basically they -- the information that's been  
23 uploaded to their platform is discoverable by the attorneys in  
24 that case, who happens to be Mr. Carson as well.

25 But Cornerstone has nothing to do with this case. And

1 to the extent to which the information is parallel to the  
2 information that they produced in the trade secret case,  
3 Mr. Carson is -- you know, has access to it, but Mr. Carson has  
4 never retained an e-vendor in this case.

5 MR. WALTON: That's right.

6 THE COURT: Okay. So this is where I have some  
7 problems, Mr. Carson, because when you say to things to me like  
8 Cornerstone refused to produce documents with attachments or  
9 produce documents with metadata, okay, it's not Cornerstone's  
10 obligation to do that. It's your obligation.

11 MR. CARSON: Right, Your Honor. The parties agreed --  
12 there's a reason why we agreed to use the discovery from the  
13 trade secret case in this case, and that's because all the  
14 keywords -- it's all the same parties, it's all the same  
15 entities. So we have hundreds of thousands of documents that  
16 form a super broad production in the other case, and we both --  
17 and the parties agreed, like, why not try to parlay that for  
18 this case.

19 THE COURT: Mr. Carson, I'm all for -- Mr. Carson, I'm  
20 all for agreements that create efficiencies.

21 MR. CARSON: Right.

22 THE COURT: And that's fine. But it doesn't absolve  
23 you of your discovery obligations in this case.

24 MR. CARSON: Your Honor --

25 THE COURT: And so -- and so you can't say to me, oh,

1 we agreed to use Cornerstone, who is engaged in Judge Sanchez's  
2 case.

3 I mean, I haven't studied them, but I did pull the  
4 orders from Judge Sanchez's case where he directs you to use  
5 Cornerstone.

6 Here's the thing. Ultimately, it's not my problem.  
7 Okay? It's your problem how you get the defendants the data to  
8 which they're entitled. But they are entitled, not just  
9 because of my order but because of the Federal Rules of Civil  
10 Procedure, to metadata that will allow them to the parent-child  
11 relationships of ESI that you have produced. And I don't  
12 care --

13 Mr. Carson, I can see you, so I can see you smirking  
14 at me and rolling your eyes.

15 MR. CARSON: Your Honor, I'm by no means smirking at  
16 you and rolling my eyes. What I am doing is expressing  
17 frustration, because I don't even know what that means, what  
18 the parent-child relationship is, and --

19 THE COURT: That's part of the problem. It is your  
20 responsibility to know that.

21 MR. CARSON: But, Your Honor --

22 THE COURT: First of all, we raised this at an earlier  
23 hearing. We talked about it. So if you didn't know what it  
24 meant, you either had to ask or go educate yourself.

25 MR. CARSON: Right. And today I think I have an



1 understanding, but the order that you issued on November 13th,  
2 there is only one company on the planet that can comply with  
3 that order, and that's Cornerstone. Like there's nobody --  
4 because your order was to -- for text messages to be produced  
5 based on snippets that Cornerstone produced. So you didn't  
6 just order, Your Honor, that plaintiff had to produce text  
7 threads generally. What you ordered is that plaintiff had to  
8 produce text threads for hits based on a discovery production  
9 that Cornerstone originally produced.

10 THE COURT: Right. Because you have told me  
11 throughout the case that you have been relying on Cornerstone.  
12 Okay? So for me to now find out that somehow Cornerstone is  
13 not your vendor -- I don't care who's paying them, okay --  
14 they're not your vendor and they don't have to do what you say  
15 is problematic. Because my -- the discovery obligations in  
16 this case are not the discovery obligations in the trade secret  
17 case.

18 MR. CARSON: But Your Honor, the parties agreed to do  
19 it that way. You're blaming me for an agreement the parties  
20 made. Like we got to this point because the parties worked it  
21 out that we were going to do it this way. And then Your  
22 Honor --

23 THE COURT: Mr. Carson, if you've agreed to use  
24 Cornerstone in this case, that's fine with me. Okay?

25 Unless you can show me an agreement that you've agreed

1 to be bound in this case by the confidentiality orders and  
2 other restrictions that exist in the trade secret case, then  
3 that's not the same as using Cornerstone.

4 And if you need to use Cornerstone in this case  
5 differently than they are being used in Judge Sanchez's case,  
6 then you need to make arrangements for that to happen.

7 And if you need cost sharing, if you need something  
8 like that, then you needed to talk to the defendants and raise  
9 it with me. You never have.

10 MR. CARSON: I mean, we -- Your Honor, we don't even  
11 have those text messages. I mean, the text messages on the  
12 list, it's a list of text messages -- first of all, it's not a  
13 list of text messages. So that's not what it is. It's a list  
14 of every electronic communication snippet from every method  
15 of -- from every social media app, every email, every  
16 electronic message that was sent on like nine different  
17 platforms.

18 There is only one party on the plant that has access  
19 to that information. There's --

20 THE COURT: Mr. Carson, where did Cornerstone get that  
21 data?

22 MR. CARSON: From a dump that was done on cell phones  
23 in February.

24 THE COURT: And whose cell phones were they?

25 MR. CARSON: They were Lisa's.

1 THE COURT: They're still her phones.

2 MR. CARSON: I don't even know if she has them  
3 anymore. She has --

4 THE COURT: Either she has them or Cornerstone has  
5 them. Right?

6 MR. CARSON: No. I --

7 THE COURT: Or whoever this -- there was a third  
8 party, right, at some point that I saw that Judge Sanchez had  
9 ordered I guess to do the forensic imaging of the phones; is  
10 that right?

11 MR. CARSON: Yeah. They haven't been involved for a  
12 while. It's Capsicum.

13 THE COURT: Someone has the phones. Or if they don't  
14 have the phones, then the phones were destroyed, which is a  
15 problem too. But one of two things is true. Okay? Either,  
16 one, the phones exist and Ms. Barbounis has the right to access  
17 them because they're hers to make productions of data in this  
18 case, whether it's through Cornerstone or another vendor. So  
19 you can say to me, we don't have the text messages, but that's  
20 not quite right, because the phones exist and they belong to  
21 Ms. Barbounis.

22 MR. CARSON: Your Honor, accessing 567 threads on  
23 the -- I mean, we looked on her phone, because all this is done  
24 when you update an iPhone. It doesn't matter what phone you  
25 have, it updates, you know what I mean, all your information.

1           So like we looked on her phone. She doesn't even have  
2   568 threads of messages.

3           THE COURT: Okay. But the data that Cornerstone has  
4   is data that they extracted from Ms. Barbounis's phone. Right?

5           MR. CARSON: Not just her phones -- from her phones.  
6   From her social media accounts, from her email accounts, from  
7   her cloud-based storage accounts. It's more than just her  
8   phones.

9           THE COURT: But it all came from her accounts. Right?  
10   Her phones, her account.

11          MR. CARSON: Right.

12          THE COURT: It all belongs to her. Cornerstone may be  
13   holding it, but it seems to me she has a right to it too.

14          If she doesn't have a right to it, to get it from  
15   Cornerstone, because I don't know what the terms of your  
16   agreement with Cornerstone are, then some other vendor can go  
17   through the exact same exercise.

18          Now, I agree with you from an efficiency standpoint  
19   that it makes no sense to start over with a new vendor and ask  
20   a new vendor to go make the same forensic images and the same  
21   forensic collection because that's a time-consuming and  
22   expensive process.

23          MR. CARSON: Like \$30,000.

24          THE COURT: So if you look at it in this case and  
25   said, we're not going to go do that again, we're going to start

1 with that universe of materials that Cornerstone has, that's  
2 fine. And that makes eminent sense to me. Okay?

3 But then you get to the next step, because that's your  
4 starting universe of materials to produce. But then from that  
5 universe you've got a production that gets made in the trade  
6 secret case and you've got a production that has to get made in  
7 this case. And there may be overlap. Right? If you think  
8 about the Venn diagram of them, they may be overlapped, they  
9 may be substantially overlapped. But they're not the same, and  
10 they're not subject to the same protective orders or anything  
11 else.

12 And if Cornerstone hasn't been engaged to do the work  
13 in this case to provide the production in this case, even to  
14 the extent it's overlapping with what's done in the trade  
15 secret case, then they should have been, because that's where  
16 we seem to have a problem.

17 MR. CARSON: I know. They refuse to be, though. I  
18 told them to.

19 THE COURT: No, no, no. They refuse to take the  
20 action, because you don't have an engagement letter with them  
21 for this case.

22 MR. CARSON: No. That's not right. They refuse to  
23 allow me to engage them.

24 THE COURT: Okay. Well, then that's -- I guess that's  
25 because of the nature of their engagement in the trade secret

1 case.

2 MR. CARSON: That's right.

3 THE COURT: Then you needed to get some other vendor  
4 in.

5 MR. CARSON: But that's not what you ordered, Your  
6 Honor. Your order was that we go to Cornerstone and ask them to  
7 do this.

8 THE COURT: And Mr. Carson, this is why I asked for  
9 regular updates, so we could deal with this and not be a  
10 week-and-a-half after the close of discovery and dealing with  
11 this.

12 And I don't disagree with you, Mr. Carson. And I've  
13 said it before in this case, that to some extent the delays in  
14 this case and the problems that we've encountered are problems  
15 from -- that are to some extent of the defendants' making too,  
16 because there was a substantial delay in raising a lot of these  
17 issues. They shouldn't have been raised in October. They  
18 should have been pressed through in June, July, and I should  
19 have been hearing about them in -- I understand early, early in  
20 the discovery process it was early days of the pandemic. I'm  
21 sure that people were looking around, going, I don't know what  
22 to do with myself. That's fine.

23 There was ample time after we realized things were  
24 going to progress for everybody to push forward on these  
25 issues, and they didn't. And I understand that. And I don't

1 disagree with that point.

2 But that doesn't absolve you of your obligations,  
3 Mr. Carson, to comply with discovery in the case.

4 So if Cornerstone is saying to you that they won't be  
5 involved in this case and they're not going to allow you to  
6 direct them to make productions in this case of the things that  
7 are relevant in this case and that I am ordering produced in  
8 this case, then someone has to. Okay?

9 And whether that means getting another -- if they  
10 don't want to do it, I don't think I need a third party neutral  
11 in this case. Okay? I can see why a trade secret case is very  
12 differently positioned than this case, and I can see how Judge  
13 Sanchez would have gotten there. That's not what this case is  
14 about. This case is not just about discovery, and it's not  
15 about what Ms. Barbounis had on her devices. And so I'm not  
16 interested in appointing a third-party neutral in this case.

17 But that doesn't mean that there isn't a need for an  
18 e-discovery vendor. Most cases have a need for an e-discovery  
19 vendor. Most complicated, complex litigation does these days.  
20 And, you know, that's why we've gotten to where we are in terms  
21 of the discovery problems that we have.

22 Let me ask, since we're talking about Cornerstone,  
23 Mr. Walton, does Cozen have access to the Cornerstone platform?

24 MR. WALTON: Does Cozen have access to the Junto  
25 platform? No. That's in the trade secret case.

1           But we have our own Relativity environment, which we  
2   have uploaded some of the material that's on Junto into our  
3   Relativity.

4           THE COURT: And how are you getting it from Junto?

5           Are you -- there was some reference in one of your  
6   emails to Mr. Carson making productions via Dropbox. I don't  
7   know whether you're doing that. I don't know whether  
8   Mr. Gold's folks who were involved in the trade secret case are  
9   pulling stuff down and then loading it back up for you.

10          How is that happening?

11          MR. WALTON: No. Cornerstone is sending it to us.

12          THE COURT: Okay.

13          MR. WALTON: The Dropbox came from Seth. Seth -- I'm  
14   sorry, Mr. Carson.

15          Mr. Carson has a Dropbox that he produces discovery  
16   via Dropbox. And so he produced the text messages in his  
17   Dropbox. And the way he produces them, he just throws them in  
18   there, and then we have to go in there and kind of find them.

19          And so I believe we -- I shouldn't say we.

20          We got the text messages Wednesday before  
21   Thanksgiving, around midnight, like 68 threads. It took us  
22   until Tuesday to find them on the Dropbox, the following  
23   Tuesday. And then we had downloaded those into our Relativity  
24   environment. And we've been going through those. And we found  
25   some pretty explosive stuff. But that's 68 threads out of the



1 568 that we created the spreadsheet for.

2 THE COURT: So when you get things from the Junto  
3 platform, Mr. Walton, is it coming -- is it stuff -- and I  
4 don't know who knows the answer to this.

5 Is it coming because Cornerstone has deemed that it is  
6 able to provide it to you subject to the terms of whatever  
7 confidentiality orders exist in the trade secret case? How is  
8 it that Cornerstone is able to produce some things to you and I  
9 guess not other things?

10 MR. WALTON: Well, first of all, it's not coming from  
11 the Junto platform. The Junto platform is like Relativity.  
12 They -- I just want to make it clear.

13 They have images that they've searched and they have  
14 filtered and everything else.

15 THE COURT: So they're sending you some sort of a file  
16 with an appropriate load file, probably in some sort of  
17 Concordance back end load file that allows you to load it into  
18 Relativity. Is that right?

19 MR. WALTON: Yes, sir. And so they gave us -- this  
20 goes back into June and July and everything, where we were  
21 having -- where we agreed initially that we would use the trade  
22 secret production to see what's in there first; because like  
23 you said, it was the most efficient way of doing it.

24 And there was a lot of back and forth about us getting  
25 access to it. We finally got access to it. And just they did

1 it kind of as -- I don't want to say as a favor. They didn't  
2 feel comfortable with it, but they just said, well, okay, we  
3 can give you what we produced in the trade secret case. And  
4 that's why we still have problems with the text message  
5 bubbles, for example, because as per Judge Sanchez's order,  
6 that's all they were allowed to do.

7 So when we say to them, hey, we need to get the full  
8 text threads, they say, hey, we feel uncomfortable about that  
9 because Judge Sanchez said we're only allowed to give the  
10 bubbles.

11 Do you know what I mean by bubbles?

12 THE COURT: Yes. I get it, as opposed to -- the  
13 individual single -- whether it's an SMS or MMS message --

14 MR. WALTON: Yes.

15 THE COURT: -- as opposed to the complete thread.

16 MR. WALTON: Yes. And that's just an example, Your  
17 Honor, of the type of problems that we run into, because then  
18 they're like, we don't want to do anything that is in violation  
19 of Judge Sanchez's order.

20 Now, they did tell me -- and I disagree with  
21 Mr. Carson on this -- that Mr. Carson could have hired them and  
22 we would waive the conflict to the extent that there was any.

23 They said the most comfortable way of them dealing  
24 with it is for Mr. Carson to get his own vendor. They would  
25 give the images over to the vendor, just the raw images,

1 that --

2 And just so you know, the images were taken from  
3 Capsicum in like February, and then those images were ordered  
4 handed over to Cornerstone. So those images of the phones were  
5 taken back in February.

6 Now, Mr. Carson could either take the phones that he  
7 currently has and the Google accounts and the social accounts  
8 and give them to a brand new vendor and start over, or he could  
9 hire Cornerstone to do a piece of it and then get his own  
10 vendor.

11 But we ran into problems with Cornerstone because  
12 we're paying for Cornerstone. And, you know --

13 THE COURT: Let me be clear. When you say we --

14 MR. WALTON: MEF.

15 THE COURT: -- is Cozen paying them?

16 MEF is paying them.

17 MR. WALTER: No, MEF.

18 THE COURT: Cozen is not, because Cozen doesn't have a  
19 relationship with them because they're only in the trade secret  
20 case?

21 MR. WALTON: Not on this case. That's exactly right.

22 THE COURT: Okay. I think I understand the dynamic.

23 Again, these issues would have been much easier to  
24 sort through in August and September than they are now given  
25 where the case is.

1           Okay. I want to sort of step back on a couple of  
2 things and then kind of work my way back forward.

3           So let me get a status update on some of the other  
4 issues that are floating around in the case to make sure I know  
5 where things stand and what's still out there as an issue.

6           There was a letter -- I guess, Mr. Walton, you sent me  
7 a letter right before Thanksgiving as your weekly update saying  
8 that the parties were still working on scheduling depositions.

9           What depositions are still --

10          MR. WALTON: One of the depositions is Marnie Meyer.  
11 She's the fourth plaintiff that's represented by Ms. Shikunov.  
12 And we're not involved in that case.

13          THE COURT: We being who?

14          MR. WALTON: We being Cozen. Clark Hill is involved  
15 in that case as the defense firm.

16          Am I talking loud enough? Can you hear me?

17          THE COURT: Yeah, you're fine.

18          MR. WALTON: I'm sorry. I'm sorry, Your Honor.

19          And that there's a pending motion for DQ, for  
20 disqualification, against Eric Shikunov in that case. So she  
21 doesn't feel comfortable producing Marnie Meyer and  
22 representing her until that motion for DQ is resolved. And  
23 that's in front of Judge Gallagher. And so I don't know when  
24 that's going to be resolved, but that's been fully briefed,  
25 from my understanding. So that's one thing.

1           And another thing is we've been trying to serve  
2 subpoenas on third-party witnesses. We haven't been successful  
3 doing that. But the most important one is Marnie Meyer.

4           And then the other, I've asked Mr. Carson, we need to  
5 depose Ms. Brady and Ms. Yonchek. They were initial plaintiffs  
6 that Mr. Carson represented. We've gotten some other  
7 documents, but we've gotten documents afterwards, and we have  
8 not taken their depositions in the Barbounis case. I've asked  
9 Mr. Carson if he still represents them, and I don't believe I  
10 got a response to that. We've sent a couple emails on that.  
11 So we're trying to figure out if we need to subpoena them or  
12 whether we can get them produced through Mr. Carson.

13           THE COURT: Let me ask a couple questions.

14           All the depositions that were scheduled in the October  
15 26th order have happened?

16           MR. WALTON: Yes, sir.

17           THE COURT: Okay. And I know there were some third  
18 parties who -- at the time who you were still working on.

19           Let me look. I think I had asked for a status update  
20 on the third parties. Let me look and see what that said.

21           So I guess my question is for you, Mr. Walton, with  
22 respect to Ms. Brady and Ms. Yonchek, obviously we've known  
23 about them for a while. I think I had some discovery issues  
24 early on with the subpoena to Ms. Yonchek that I dealt with.

25           It doesn't look like they were raised as potential

1 deponents back in October, so why are they still -- why are you  
2 dealing with them now?

3 MR. WALTON: We're just getting text messages  
4 involving them from Ms. Barbounis. And we've decided that  
5 there's some stuff that we didn't have previously that we'd  
6 like to ask them about.

7 THE COURT: So it's based on recent productions?

8 MR. WALTON: Yes, sir.

9 THE COURT: All right. Well, you guys will have to  
10 talk, and if you can agree on scheduling the depositions, then  
11 that's fine. If you can't, I guess you'll put it in front of  
12 me and I'll decide whether or not what's in there constitutes  
13 good cause to let you take the depositions or not. You know,  
14 certainly the timing may be, but the question is what the  
15 substance is too.

16 All right. There has been throughout the case  
17 discussion about Telegram and Ms. Barbounis's Telegram account.

18 I assume based on the last things that I've seen that  
19 there's been no production of information in Telegram; is that  
20 correct?

21 MR. WALTON: Yes, sir.

22 THE COURT: What has been done to try to collect data  
23 from Telegram, to try to get information out of Ms. Barbounis's  
24 account?

25 Mr. Carson, I'm going to start with you on this one.

1           MR. CARSON: Sure. I've had a conversation -- I've  
2 had several conversations with Cornerstone about this.

3           You can't produce -- you can't pull down data from  
4 Telegram apparently. It's because -- I mean, it's because  
5 Telegram doesn't use user name and passcodes. The only way to  
6 get into a Telegram account is through a telephone. So I think  
7 that there's also -- the same issue exists with Signal and I  
8 think Wickr too he said, where you can't get that  
9 information --

10          THE COURT: Let me --

11          MR. CARSON: -- through a dump.

12          THE COURT: -- make sure I understand that.

13          You can get it from a telephone.

14          MR. CARSON: Right.

15          THE COURT: I presume that means the identity it's  
16 using is either something on the SIM card, like an ISIM number  
17 or something like that; is that right?

18          MR. CARSON: I think what he said was you can get it  
19 through a telephone, so if there was information from Telegram  
20 available, it would have been on -- then it would have been  
21 part of the information that was taken when the phones were  
22 imaged in February.

23          THE COURT: Is Telegram information stored locally on  
24 the phone, or is it stored on some server somewhere? I assume  
25 it's the latter, but I don't know.

1           MR. CARSON: I think that the only way to get it is  
2 through imaging a phone is what he said. You can't like -- you  
3 can't go onto their server somewhere and download it from a  
4 server.

5           THE COURT: No. I know you can't just go onto their  
6 server.

7           But my question is -- I mean, Facebook data, to use  
8 something that we're all more familiar with, is not stored  
9 locally on your device.

10          MR. CARSON: Right.

11          THE COURT: It's stored, you know, in the cloud. But  
12 if I access it from my device, then I can -- there are settings  
13 that allow me to pull it down.

14          And, you know, I think I've seen that you're pulling  
15 down things like WhatsApp messages and things like that.

16          MR. CARSON: Right.

17          THE COURT: Those are all the same thing. None of  
18 that is stored locally. It's all stored on servers.

19          MR. CARSON: That's the difference. With Facebook, my  
20 client could get on the phone with Cornerstone and give them  
21 her credentials and get them logged in so they can pull it  
22 down. Telegram, you can't do it like that.

23          THE COURT: Why can't they -- but if she gives them  
24 access to her phone, either --

25          MR. CARSON: That's -- go ahead.



1           THE COURT:  -- either she or you with the phone open  
2   can get into her Telegram account.  Right?

3           MR. CARSON:  I think what they said is that they did  
4   do that, and if there -- and there's a declaration to this  
5   somewhere, that if there was no Telegram messages produced  
6   through the production when the phones were imaged, then that  
7   means there was none on the phone, that they didn't exist.

8           THE COURT:  Mr. Walton, you're shaking your head.  
9   What's your understanding of this?

10          MR. WALTON:  We have downloaded text -- I'm sorry,  
11   Telegram accounts.  There's a desktop client that you can go  
12   and you can download it, from like a desktop, a laptop.

13          THE COURT:  And what are the credentials that you use  
14   to get in then, because --

15          MR. WALTON:  User name and password.  That's my  
16   understanding.  I mean, that's how we got them, and we have --

17          THE COURT:  And have you provided it -- have you  
18   talked to Mr. Carson about that and given him access to the  
19   desktop client?

20          MR. WALTON:  Well, it has to be the desktop client on  
21   her computer or a computer that she goes and --

22          THE COURT:  Right.  But I assume the desktop client is  
23   something you just download somewhere.  Right?

24          MR. WALTON:  I believe so, Your Honor.  I mean --

25          THE COURT:  Have you given him the link or app store

1 name -- I don't know if it's an app store in Windows 10 or  
2 what, but whatever it is, have you given Mr. Carson the  
3 information he needs to pull down that client?

4 MR. WALTON: No, Your Honor. He's -- we haven't had  
5 many conversations about Telegram. I've just been told by him  
6 he can't get it, essentially.

7 THE COURT: All right. Mr. Carson, I want you to talk  
8 to Mr. Walton. I want you to look into pulling down that  
9 client, that desktop client, and see if you can pull down the  
10 Telegram data. You know, if you want to talk to Cornerstone  
11 and see if they'll do it for you, you're welcome to. But  
12 again, they're not working in this case, so it's your  
13 obligation, and you can figure out how you want to fulfill it.  
14 Okay?

15 MR. WALTON: I actually had a conversation with Rob  
16 from Cornerstone last night about it, just so I could offer  
17 like, you know, accurate information today. And they will not  
18 let me engage them. They just won't.

19 THE COURT: They won't let what you, engage them?

20 MR. CARSON: Engage them for anything.

21 THE COURT: Look, it's your obligation. So, you know,  
22 whether you do it yourself, whether you engage another vendor  
23 to help you or what, I want to figure out whether or not -- you  
24 know, I'm not going to sit here -- I hear what you're all  
25 saying.

1           I haven't used Telegram. I'm not going to start using  
2 it. And so I'm going to leave it to you guys to figure it out,  
3 but I'm going to want some clarity as to what the outcome of  
4 the process is.

5           If Ms. Barbounis -- I'd be surprised, Mr. Carson, I  
6 will just say, if there's not some sort of log-in information.  
7 Typically, you know, most device -- most messaging services  
8 have at least a single-factor authentication, where you log in  
9 with a user name and password.

10           It may be that once you've done that once on your  
11 device, that either the thumbprint or face ID, depending how  
12 recent the device is, allows to you maintain that log-in.

13           And it wouldn't shock me if there's some sort of  
14 two-factor authentication, where you get, you know, a text  
15 message to get a code to put in so that you can reconfirm,  
16 because that's fairly typical in the event of lost credentials  
17 and things like that as a security device.

18           And I just -- I'd be surprised if the answer were once  
19 anybody gets into your phone, they can have access to your  
20 Telegram without some sort of -- you know, even if you decided  
21 to take the risk of storing the log-in. There's got to be a  
22 log-in somewhere.

23           MR. CARSON: Your Honor --

24           MR. GOLD: Your Honor --

25           THE COURT: One at a time. Hold on. One at a time.

1 I was talking to Mr. Carson. Let him respond, and  
2 then I'm happy to hear from you.

3 MR. CARSON: My response isn't that important.

4 I was going to say, the way I understood it is from  
5 your phone you tell them what the phone number is and then they  
6 send you a code and you type that code in and that's how it  
7 goes into the account.

8 THE COURT: Right. Well, that's a form of two-factor  
9 authentication. And that may be able to be done even not on  
10 the phone itself. Right?

11 I mean if you log on onto a client on the desktop and  
12 say this is my phone number and you get the text message and  
13 you punch the code into your desktop client, you may still have  
14 access to the messaging services.

15 And again, it wouldn't surprise me, Mr. Carson, just  
16 as logic dictates that a lot of these messaging services do  
17 offer some sort of desktop client so that people can use them  
18 when they're not remote, particularly if the idea is to use it  
19 in a business environment. But you'll look into it, and you'll  
20 update me.

21 I'm going to want you guys to update me by next Friday  
22 on what you find with that.

23 You know, let me know. Obviously the ideal report  
24 that I get from you is we did it and it's done; but if there  
25 are steps to be done, I want to know what this process is, but

1 I want to know what you find as you look into it. Okay?

2 MR. CARSON: Your Honor, just for clarity, you're not  
3 ordering that her entire Telegram account has to be produced,  
4 just the messages relevant to the case?

5 THE COURT: I want relevant messages produced. Right.  
6 Mr. Gold, go ahead.

7 MR. GOLD: Your Honor happens to be correct. You can  
8 export the Telegram messages from any desktop by using the  
9 two-factor authorization. It can be done by --if Mr. Carson  
10 himself has done this in the Delaney Yonchek case. And he has  
11 accessed those Telegram messages for us back in April, so he  
12 knows how to get the messages. Somebody has to go on a desktop  
13 and use that information and access the information.

14 THE COURT: I don't need to wade into --

15 MR. CARSON: I don't remember.

16 THE COURT: -- whether it has happened or not.

17 And I don't know what the circumstances were with  
18 Ms. Yonchek or Ms. Brady -- or Ms. Delaney, rather.

19 But you guys will talk. My gut instinct is there's a  
20 way to do it, but, you know, you need to figure that out.

21 Okay. There was an issue when we were on the last  
22 hearing with some documents that, Mr. Walton, you said had been  
23 produced with redactions.

24 Has that issue been cleared up? Do you know what was  
25 produced with redactions and what the basis for the redactions

1 were, or have they been produced in an unredacted way, or is it  
2 still outstanding?

3 MR. WALTON: I understand the basis of the redactions.  
4 The redactions have not been resolved.

5 The issue involves Cornerstone again, Your Honor, in  
6 that they were ordered by Judge Sanchez only to produce the  
7 messages, just the message with the hit.

8 So for example, if there was a Twitter DM and there's  
9 a whole string of Twitter messages, if there's one that has the  
10 hit, that's all that they were supposed to produce.

11 So what they did on the Twitter DMs is they went  
12 through and they manually redacted. Same with the Instagram  
13 DMs, they manually redacted everything. That's the way they  
14 had to do it from --

15 I'm sorry if you hear my dogs barking in the  
16 background.

17 THE COURT: If wouldn't be a virtual hearing without  
18 someone's dogs, Mr. Walton. It's okay.

19 MR. CARSON: I have two kids on Zoom school and three  
20 dogs, so just bear with me.

21 So that is -- that's the reason why they have the  
22 redactions, Your Honor.

23 THE COURT: Okay. All right. Well, you guys are  
24 going to have to work that out. And again, this goes to one of  
25 these issues with the fact that you've got Cornerstone

1 laboring, you know, in the trade secret case. And that  
2 doesn't -- the fact that they're laboring in the trade secret  
3 case doesn't change the discovery obligations in this case.

4 And then we've talked about the text messages, so I  
5 know where that stands, although I guess, Mr. Carson, you had  
6 suggested there were some conversations you had with Mr. Walton  
7 about the text messages.

8 Has there been any kind of resolution that I need to  
9 know about, or is it still an open issue?

10 MR. CARSON: I think it's an open issue. The one  
11 thing I would just suggest is that -- so I did produce 70 text  
12 threads, which is more text threads by ten times than I think  
13 I've ever produced in any other case I've ever worked on.

14 And I think that -- I only had these 70 text messages,  
15 because back a year ago when we were trying different things,  
16 we tried -- we did like a test run to see how we could get --  
17 how could we produce information. And we tried to like use a  
18 few keywords, like "MEF."

19 And so I had these text threads just in a folder from  
20 then. I just produced them, I didn't read half of them, in  
21 accordance with Your Honor's order. Even though I filed a  
22 motion for reconsideration, which I would argue that the  
23 production is subject to that motion and Your Honor's ruling on  
24 that motion, I produced them.

25 And I don't know -- like, you know, if there's 578

1 text threads that were -- that they want access to, and they  
2 want access to the entire text thread plus all the metadata and  
3 attachments, I just think there should be some kind of offer of  
4 relevance, because I can't imagine that that many text threads  
5 is relevant to the case. I mean, it just happens to be threads  
6 that hit on keywords.

7 And a lot of -- I mean --

8 THE COURT: Okay. I understand what that is,  
9 Mr. Carson. I'm going to come back to reconsideration, which  
10 is essentially what you're leading into right now.

11 MR. CARSON: Okay.

12 THE COURT: Let me just see -- okay.

13 The other issue that I haven't I guess touched on,  
14 Mr. Carson, I know I got updates from you about your review of  
15 the images you had. And it sounds like you found a workaround  
16 and --

17 MR. CARSON: I did.

18 THE COURT: Are you done?

19 MR. CARSON: I've -- I'm not done, but I'm like  
20 95 percent there.

21 So I produced today -- they might not have even seen  
22 them yet. I produced today like 1,350 images that I think are  
23 relevant that I would not feel comfortable certifying that -- I  
24 have a certification about producing those, so, like, I  
25 produced those.



1           There were -- I made 13 binders of images from all --  
2   from the whatever, 100,000 images. And so I got through 12 of  
3   them. So there's one more binder I didn't get through before  
4   the hearing today.

5           THE COURT: Okay. And then there was an issue,  
6   Mr. Carson, with media files, not just images but audio  
7   recordings.

8           Where does that stand?

9           MR. CARSON: Yeah. They are also -- they are also  
10   part of that -- the 13 binders.

11           I haven't gone through all the images yet. After I  
12   get through the images, there's a substantial amount of media  
13   files then. I think --

14           I can't imagine at least one of them won't have to be  
15   produced.

16           THE COURT: I'm a little confused when you say  
17   binders, because --

18           MR. CARSON: They're binders I made.

19           So what happened is they sent me like, you know, like  
20   12 folders with like 10,000 to 15,000 messages or images -- or  
21   files, I should say, not images, files in each one. Some of  
22   them are media files. Most of them are images.

23           THE COURT: So did you have the audio files  
24   transcribed? What do you mean, they're in the binders?

25           MR. CARSON: What I mean is that I haven't even gotten

1 to all the images yet. And after I get to the images, I have  
2 to work through the audio files.

3 THE COURT: How many audio files are there?

4 MR. CARSON: I'll estimate that there are probably  
5 500. That's a total estimate.

6 THE COURT: And are they typically like two-minute  
7 conversations or are they 30-minute things?

8 MR. CARSON: Some of them are -- most of them, I would  
9 say, the average is probably like 25 seconds, you know. Some  
10 of them are a little longer, some are shorter.

11 THE COURT: Okay. So they won't take -- I mean, it's  
12 not a nothing job, but it's not days and days and days. Right?

13 MR. CARSON: I think I can get through it maybe today.

14 THE COURT: Okay. All right. Mr. Walton?

15 MR. WALTON: I think there's more like 3,000, Your  
16 Honor. And I think --

17 MR. CARSON: If there is, it's because I didn't count  
18 them all.

19 MR. WALTON: No. I'm not saying he's lying. I'm  
20 saying it's more like 3,000.

21 And just so you know, the audio messages,  
22 Ms. Barbounis would have a practice of saying kind of voice  
23 messages like you and I might use text. Okay?

24 THE COURT: Uh-huh.

25 MR. CARSON: She would do a lot of it through voice

1 messages. So they're not voicemails, but they're voice memos.

2 THE COURT: Are they audio texts that she sends as  
3 SMSs, is that what you mean? Or is she just storing audio  
4 recordings that either she emails to someone or she texts to  
5 someone as an attachment?

6 MR. CARSON: Yeah. There's a way you can do it in  
7 WhatsApp and there's a way you can do it in these other  
8 services she's using.

9 They are not -- it's not her dictating to Siri and  
10 then Siri sends it out as text.

11 THE COURT: No. I understand. If you're in your  
12 iMessage app, for example, and you hit the voice recording  
13 button and then you record the text and it shows up on my end  
14 as an audio file.

15 MR. WALTON: Yes. Exactly.

16 THE COURT: Understood.

17 MR. CARSON: Apparently that's how they do it in the  
18 UK. People instead of texting, they send these voicemails. So  
19 like I guess she got used to doing it like that. And they're  
20 there.

21 THE COURT: Let me turn to reconsideration, because  
22 you were getting into it, Mr. Carson.

23 And I did read your motion for reconsideration that  
24 you filed on the 25th.

25 I'm going to tell you my thinking on it, Mr. Carson,

1 and then I'm going to let you respond.

2 I didn't order this production just because I  
3 concluded that there was relevance, that everything was  
4 necessarily relevant. But I did reach the conclusion that all  
5 of these terms -- all of these text strings had some relevance,  
6 because they had a hit on a search term. And the search terms  
7 are things that, for whatever reason and whatever the process  
8 was -- and it may have been in the trade secret case. But  
9 that's how you guys decided to identify a universe of  
10 materials. And so if the only thing I've got in front of me  
11 that identifies a universe of materials that is facially  
12 potentially relevant, okay, so we start from that point.

13 And then the decision to order their production in  
14 their entirety was frankly done because -- it was a sanction,  
15 Mr. Carson, because I determined that any objections had been  
16 waived, that things were not being done to fulfill the  
17 discovery obligation of actually reviewing the text threads.  
18 And again, I understand that the production of them took place  
19 pursuant to whatever restrictions were in place in the trade  
20 secret case. But as I said, there's a universe of material to  
21 start with in this case. It may overlap with what's in the  
22 trade secret case, but the obligations to produce are  
23 different, and so I ordered their production in their entirety  
24 for that reason. So it's not just I decided, oh, it's all  
25 relevant.

1           I recognize there were privacy issues that were at  
2 stake. I know that's a big part of what you are saying in your  
3 motion. It comes up several times that these are private and,  
4 you know, maybe you shouldn't be ordering their production. I  
5 think I addressed that when I ordered the production in the  
6 first place, because -- and I'm looking back now at the  
7 transcript from November the 13th. And I'm going to find the  
8 right page.

9           But what I said to you at the time was that I  
10 recognized that the requirement to produce all of the text  
11 messages was likely to be overbroad, that it was likely to  
12 capture material that was, you know, not necessarily relevant.

13           I said, page 44 of the transcript, I said, I'm doing  
14 this because there doesn't seem to be a process to review.  
15 There doesn't seem to have been a sound e-discovery process in  
16 place in this case, so I think objections have been waived. If  
17 there were privilege issues, I assume they were logged.

18           And then I said, going forward -- what I said to you  
19 at the time was you're going to have to have a really good  
20 reason to explain to me, not just that it's burdensome, not  
21 just that it's intrusive, but you're going to have to explain  
22 to me what you did to fulfill your discovery obligations in  
23 this case through an evaluation of metadata and email threading  
24 or text threading in order to produce stuff with context.

25           And I also said to you that if you were getting into

1 stuff that was overbroad, I understood that, I understood the  
2 concern, and that the way to deal with that was by a protective  
3 order.

4           And I stand by that. It seems to me that the issue --  
5 concern about privacy is one that can be handled by agreeing to  
6 a protective order with the defendants, treat it on an  
7 attorneys' eyes only basis, you know, and put a provision in  
8 that says -- you know, I don't want to tread on Judge Sanchez's  
9 case, so whatever is produced in this case can only be used in  
10 this case. Put that in the protective order. And frankly, you  
11 know, I'll just --

12           I'll short-circuit all of this. Given the order that  
13 I've entered as to text messages, I do think there's good cause  
14 under Pansy for that type of protective order to preserve the  
15 privacy of the information in the first instance. I recognize  
16 that there's going to be stuff that is out of the scope of this  
17 case that's going to be produced, and I recognize that there's  
18 material that's probably private and sensitive.

19           But we are where we are in this case, and I need this  
20 stuff produced. And Mr. Carson, I think to ask you to start  
21 going through all those text messages is going to slow us down  
22 enormously. And so what we're going to do is -- and I'm going  
23 to give you a chance to respond to this.

24           But I want the text messages produced. I'm going to  
25 order that the text messages that are produced pursuant to this

1 order be treated on an attorneys' eyes only basis by all  
2 counsel. They cannot be shown to clients. I am open to  
3 motions to modify that if there are portions of text messages  
4 that you think need to be shown to clients. We will tackle  
5 questions of what to do with material that's used in motions  
6 later.

7           If you're going to file -- if you're going to submit  
8 any portion of these text messages to -- in connection with a  
9 motion as a court filing or if you're going to submit them --  
10 well, I'm not going to deal with trial right now.

11           But if you're going to submit them as an attachment to  
12 any kind of submission to me that would be on the public  
13 docket, then you have an obligation first to meet and confer to  
14 try and work out whether it should be filed -- whether or not  
15 they can -- confidentiality can be waived or whether you think  
16 confidentiality is even necessary.

17           If you don't have an agreement, then whoever is  
18 submitting the text messages needs to do so by filing a motion  
19 to keep them under seal. And I will look at them with an eye  
20 towards the privacy interests that are implicated and decide  
21 whether to keep them under seal.

22           I'm not insensitive to the question, Mr. Carson, about  
23 the privacy interests here.

24           If they go right to the core of the case, then I think  
25 that may have been put at issue and maybe there's not a privacy

1 interest that needs to be preserved. If there's stuff that --  
2 you know, sometimes you have text messages where there's  
3 different conversations going on in the same few messages. And  
4 if there's stuff there that does implicate a privacy interest,  
5 and you guys want to -- and if it's irrelevant and you want to  
6 redact it to submit it to me, that's fine.

7 If you can't agree on that, put it in with a motion to  
8 seal, and I'll look at whether we can seal all or part of it.  
9 Okay?

10 But that's my inclination as to how to deal with it  
11 and to deal with the privacy interests while still -- and  
12 balance the privacy interests against this and otherwise to  
13 deny reconsideration and require you to produce the text  
14 messages. And you're going to have to figure out how to do  
15 that by working with either Cornerstone or some other vendor.

16 But I'm open to hearing you on the issue, Mr. Carson.  
17 It's your motion, and I want to give you a chance to respond.  
18 That's not my final ruling. That's just -- in California they  
19 would call it a tentative ruling or New Jersey they would call  
20 it a tentative ruling and give you a chance to weigh in. So  
21 let's treat it that way.

22 I can't hear you, Mr. Carson.

23 MR. CARSON: I don't -- can you hear me now?

24 THE COURT: I can.

25 MR. CARSON: I don't know why my computer does that.



1           My suggestion would be that I just think -- there's  
2   568 text threads that were indicated or identified by the  
3   defendants. And it seems to me that that's like every text  
4   thread she's ever sent in her entire life. You know, it's like  
5   she -- we've kind of looked at her phone. We can't find that  
6   many text threads on her phone, so I don't know where they're  
7   coming from. But to produce every single text conversation  
8   with every single person that she's ever known for the last  
9   whatever amount of years and then produce the entire thread in  
10   its entirety just seems to be not in any way proportional to  
11   this case.

12           THE COURT: Well, you know, the proportionality  
13   concerns would have rung far more true to me, Mr. Carson, if  
14   this issue had been raised earlier.

15           We are now, you know, more than a week past the close  
16   of discovery and I'm still trying to sort this out. And so  
17   from a proportionality standpoint, I hear what you're saying,  
18   but I also think that the way to navigate that proportionality  
19   here is to deal with it with a protective order.

20           So in some respects, you benefit. Right? You don't  
21   haven't to spend the time sorting through them and trying to  
22   navigate what is and isn't relevant. You're going to shift  
23   that burden to Mr. Walton and his folks, and they'll figure out  
24   what it is. And, you know, I don't know if it's 568 separate  
25   threads. You know, I don't know given the way Cornerstone did

1 it that maybe some of these hits are in the same thread. And  
2 so I don't really know.

3 But I think that -- I hear what you're saying about  
4 sort of weighing privacy and proportionality, but I do think  
5 there's an expediency to doing it this way. There is some  
6 facial reason to think that these text threads are relevant,  
7 and given where we are in the case, I think that the way to do  
8 it is by letting them look at it subject to the restrictions  
9 I've imposed. I am going to preserve Ms. Barbounis's  
10 confidentiality, at least as to the stuff that may be  
11 overbroad.

12 So, you know, I guess I'm -- what I'm going to say,  
13 what my order will say, Mr. Carson, is that I'm granting in  
14 part and denying in part the motion for reconsideration. And  
15 I'll say this in an order today.

16 Granted in part in that the production of text  
17 messages is subject to the confidentiality provisions that I've  
18 laid out on the record and otherwise denied. Okay?

19 Mr. Walton?

20 MR. WALTON: Yes. I'm sorry to raise my hand like  
21 that, Your Honor. I don't know how else to do it.

22 THE COURT: It's okay.

23 MR. WALTON: May I be heard on your proposed order?

24 I have a request.

25 THE COURT: Yes.

1           MR. CARSON: We gave Mr. Carson a list, actually, of  
2 about 2,000 threads, and we've cut it to 568 because we figured  
3 1,500 of them were duplicates the way that Cornerstone ran  
4 their report. Okay?

5           And in the interest of full disclosure, Your Honor, we  
6 have shown two of those threads to Mr. Roman, and I can tell  
7 you which ones they are, two of the 68 that we got already.  
8 And we won't show him any more after this order, but I wanted  
9 to be up front about that. Okay?

10           Number two, Mr. -- I understand putting the burden on  
11 us, but my request would be that Mr. Carson should have to  
12 identify the string, which strings he considers to be AEO,  
13 because clearly most of them shouldn't be AEO because they're  
14 clearly work related.

15           For example -- now, if he wants to do that with the  
16 ones involving her mom, her husband, treat those as AEO, that's  
17 fine. But if she's texting people in England, for example, for  
18 work that she was doing on MRI (ph) and that's all her texts  
19 for England would be, they shouldn't be treated as AEO.  
20 Respectfully, Your Honor, they shouldn't be treated as AEO  
21 initially, because they clearly aren't AEO. They're clearly  
22 work related.

23           She has text messages with the plaintiffs in this case  
24 or the other claimants. That's something that shouldn't be  
25 AEO, that we would assert shouldn't initially be AEO, because

1 it's going to add a huge burden on us. We've got summary  
2 judgment coming up on the 18th. We have to file our motion for  
3 summary judgment in addition to doing all this.

4 So I would respectfully request, Your Honor, that as a  
5 first step Mr. Carson be required to identify which threads he  
6 wants to treat as AEO. We'll separate those, keep those AEO, I  
7 won't show those to my client, but that we have non-AEO threads  
8 too.

9 Am I making sense, Your Honor?

10 THE COURT: You're making sense, but -- and here's my  
11 issue with it.

12 So I hear what you're saying. The practical reality,  
13 Mr. Walton, as you know as well as I do is that in most of  
14 these cases, you have a protective order in place, people push  
15 out their productions and they wildly overdesignate things as  
16 AEO.

17 MR. WALTON: Yeah.

18 THE COURT: And, you know, here I have a situation  
19 where I'm ordering production of these text messages, you know,  
20 frankly, out of expediency --

21 MR. WALTON: Yes.

22 THE COURT: -- because of where we find ourselves.  
23 And, you know, where we find ourselves, as I've said again and  
24 again, is not solely a function of what -- the way Mr. Carson  
25 has conducted discovery here.

1           And so I think that, going back to sort of the typical  
2   example, there's lots of documents in a typical production that  
3   are designated attorneys' eyes only and they shouldn't be but  
4   no one cares. Right?

5           MR. WALTON: Yes.

6           THE COURT: Because they're just not all that  
7   important in the case.

8           MR. WALTON: Yes.

9           THE COURT: And I think we're going to have a lot of  
10   that here too. And so what I think we're going to do in the  
11   first instance, your client is not going to be the one to look  
12   at these things. You and your team are.

13           You're going to look at them. And these provisions  
14   are going to look like they would -- my order is going to look  
15   like a typical protective order would. You're going to have a  
16   meet and confer obligation to identify for Mr. Carson anything  
17   that you think shouldn't be AEO.

18           Ultimately, if you bring that dispute to me, okay, if  
19   you guys can't work it out and you bring the dispute to me, the  
20   burden is going to be on you, Mr. Carson, to justify the  
21   attorneys' eyes only designation. Okay?

22           But in the first instance, there's going to be a  
23   default that these threads are subject to an attorneys' eyes  
24   only designation.

25           Mr. Walton, you're going to identify the stuff that

1 you want to be able to show to your client. You'll go to  
2 Mr. Carson.

3 Mr. Carson, you'll look at it. If you still have a  
4 good faith basis, you're going to explain that to Mr. Walton.  
5 And then if you guys can't reach an agreement --

6 And again, my expectation is that for a lot of these  
7 threads, you know, as with any text thread, if you produce the  
8 whole thing, there's going to be all kinds of chaff that you  
9 can treat as attorneys' eyes only and then a few messages on a  
10 few days and times that are the wheat, so to speak, and that  
11 maybe shouldn't be attorneys' eyes only because it's both core  
12 to the case and consistent with the kinds of things that  
13 Ms. Barbounis has already put in the public domain, you know.  
14 And you'll agree to exclude those from the attorneys' eyes only  
15 designation. And then you can slice and dice the text chain  
16 and show your client the relevant portions.

17 MR. WALTON: Okay.

18 THE COURT: That's how I'm envisioning the process  
19 playing out. In my order I'll put some provisions that would  
20 mirror what you would typically see in a protective order along  
21 these lines in terms of meet and confer obligations so that  
22 there's some temporal limits to how long you can take back and  
23 forth before you've got to tee the dispute up before me.

24 I will tell you, I mean, you should all know, I'm sure  
25 you all do know because you've been down this road before, I,

1 like everybody else down here, really, really dislike those  
2 kinds of disputes. You know, my approach to it when I get them  
3 is not uncommonly to look at this and say, a pox on all your  
4 houses and try to figure out some solution that then follows up  
5 with that thought. So do your best to work it out.

6 But if you can't, if there's really something there  
7 where Ms. Barbounis is saying no, this is really sensitive, and  
8 you're saying, no, we've really got to be able to show it to  
9 our client -- and again, one thing you can consider as a  
10 compromise on that issue, because, you know, it's certainly  
11 something I've done many times and probably you've seen,  
12 Mr. Walton, and have done as well.

13 If it's just a question of showing it, for example, to  
14 MEF's in-house counsel, you know, that may be a compromise  
15 where -- because he's an officer of the court too.

16 MR. WALTON: Yes, he is.

17 THE COURT: And so if he's subject -- if you agree and  
18 stipulate that he's subject to my order on this, maybe,  
19 Mr. Carson, you can get over just him seeing it, subject to his  
20 agreement, you know, to be bound by the protective order.

21 Think about that. I'm not telling you you have to do  
22 that, I'm not putting that in place right now, but maybe that's  
23 a way you can get around it, because my guess is he's the one  
24 you're going to be talking about summary judgment theories with  
25 and things like that, Mr. Walton, but I don't know.

1           MR. WALTON: Yes. A quick question, Your Honor, just  
2 from a mechanical standpoint.

3           If we have an objection that we can't work out and we  
4 need to bring that to your attention, should we do that under  
5 seal? Should we file that motion under seal, or should we  
6 draft the motion in a way that doesn't get into the specifics  
7 of the message?

8           THE COURT: Yes. Don't submit the whole thing under  
9 seal.

10          MR. WALTON: In general? In general?

11          THE COURT: Describe it in general purposes.  
12 Probably -- I mean, what I would do -- and what I think is  
13 normal in those cases is you would submit the document for an  
14 in camera review.

15          MR. WALTON: Yes. If you ordered that.

16          THE COURT: I'll do that.

17          MR. WALTON: If you read the brief --

18          THE COURT: Yes, I'll read the brief. If it's not  
19 obvious -- I presume if you guys can't work it out, hopefully  
20 it won't be obvious. If it's obvious and you can't work it  
21 out, I'll be unhappy.

22          But at that point, then I will -- I'll probably order  
23 an in camera submission. That's what I've done when these have  
24 cropped up the couple times that I've had them crop up.

25          MR. WALTON: So if we have an objection, we will keep



1 it general to Your Honor, and then it's up to you to order an  
2 in camera review if you want to do that?

3 THE COURT: Yes, yes.

4 MR. WALTON: Okay.

5 MR. CARSON: I have a more important question.

6 Where are we going to get these texts from?

7 THE COURT: That's on you, Mr. Carson. So again, you  
8 need to figure out -- and you need to go back -- if Cornerstone  
9 is going to put their foot down and say that because -- I mean,  
10 I'm not appointing them in this case. Okay?

11 So if Cornerstone is going to come back and they're  
12 going to say -- let me put it this way: I'm not going to  
13 appoint Cornerstone in this case unless you all put your heads  
14 together and want to stipulate to having Cornerstone appointed  
15 as a third-party neutral. If you want to do that, I guess I'm  
16 open to it, because I'm interested in expediency. Okay? I  
17 have some concerns about doing it just because, you know, I  
18 don't love the idea of them being a neutral, and I think I'm  
19 putting -- I'm not interested in trying to coordinate with  
20 Judge Sanchez and, you know, have the two of us tap dance  
21 around each other's orders. But if Cornerstone thinks they can  
22 comply with both sets of orders and you guys want to stipulate  
23 to that, then submit me a stipulation and I'll look at it.

24 Otherwise, I think the answer is you're going to have  
25 to get a vendor involved who is going to get the files from

1 Concordance -- or from Cornerstone with, you know, the  
2 appropriate Concordance load files, get them loaded up and make  
3 them available to you.

4 And, you know, it may be that Cornerstone is not  
5 comfortable producing them. But maybe they're comfortable just  
6 turning them over to Mr. Walton for him to load into  
7 Relativity. You know, I don't know. But maybe they don't deem  
8 that as production. I don't see why it's different than  
9 producing to a vendor. They may see it as different as  
10 producing it to a vendor, I don't know. So you guys will have  
11 to figure that out, Mr. Carson. Okay?

12 Mr. Walton?

13 MR. WALTON: I have a point of confusion.

14 THE COURT: Yes.

15 MR. WALTON: Mr. Carson produced 68 text threads to us  
16 via his Dropbox.

17 THE COURT: I thought he said that he had pulled those  
18 through -- I don't know what method. And you'll have to  
19 discuss that with him. But he had pulled those before  
20 Cornerstone and whatever that other entity was got involved.

21 MR. WALTON: Capsicum.

22 THE COURT: Yes. And I think so he -- it sounds  
23 like -- is that right, Mr. Carson, you had sort of pulled those  
24 at the outset?

25 MR. CARSON: I may have one or two others that like --

1 there was like -- you know, like naked pictures in the threads  
2 that I didn't -- or things like that. And I just wanted to  
3 wait for you to rule on the motion for reconsideration before I  
4 produced them.

5 THE COURT: Yep.

6 MR. WALTON: But I'm still confused, Your Honor, as to  
7 where those text messages came from and why that's different  
8 from the other 500. I'm just confused on that point.

9 MR. CARSON: I can explain that.

10 So they came from Capsicum, and I got them like months  
11 and months ago when we did like a test run. And I think we  
12 used five keywords to try to figure out if there was a way --  
13 because this is back when there was like 300,000 fields in like  
14 an Excel spreadsheet. And this is what got Judge Sanchez  
15 upset.

16 So I just -- I was trying to a way to get you  
17 something in connection with the Court's order.

18 MR. WALTON: Okay.

19 MR. CARSON: And I found them, and I produced  
20 everything that I had.

21 THE COURT: Maybe that's the simplest way to do this,  
22 Mr. Carson. And I don't know. I'm going to leave this to you  
23 guys to work out.

24 But if Capsicum still has forensic images of the  
25 phone, they may be the source to go to quickly to get this done

1 and get them back involved, because they may be able to do  
2 that. If it's just a question of taking an image that they  
3 have and loading it back into a database, you may be able to do  
4 that in a couple days. So, you know, consider that as well.  
5 Okay?

6 But I'm not going to tell you who exactly is going to  
7 make the messages available. You guys need to do that.

8 MR. CARSON: Can I redact like the naked pictures and  
9 things like that?

10 THE COURT: Talk to Mr. Walton. I mean, I'm confident  
11 the answer is yes, but talk to Mr. Walton about that. Okay?  
12 The only downside to that, Mr. Carson, is then you've got some  
13 time to spend going through it. Right? And you've got to  
14 balance that. I want this done, you know, relatively quickly.

15 MR. CARSON: Yes. I understand that.

16 THE COURT: Okay.

17 Mr. Walton, you alluded to this, and I want to get  
18 some clarity on it. You are anticipating summary judgment  
19 motions?

20 MR. WALTON: Yes. At least partial.

21 MR. CARSON: I'm going to file one too on the  
22 counterclaim.

23 THE COURT: On the counterclaim, okay.

24 Will yours be partial or fully dispositive in your  
25 expectation, Mr. Carson?

1           MR. CARSON: I've never filed one before, so I don't  
2 really know how to answer that. Mine is going to be just on  
3 the counterclaims.

4           THE COURT: Right. But to dispose of all the  
5 counterclaims in their entirety?

6           MR. CARSON: Yes, yes.

7           THE COURT: Okay. All right.

8           MR. GOLD: Your Honor?

9           THE COURT: Yes, Mr. Gold.

10          MR. GOLD: We're in a little bit of a problem here,  
11 because Mr. Carson has failed to comply with the Court's orders  
12 with regard to discovery and turning over information.

13          We've been severely impaired in terms of prosecuting  
14 our counterclaims, so now I find it suspicious that Mr. Walton  
15 would now file a motion for summary judgment, given the fact --

16          THE COURT: I think you mean Mr. Carson.

17          MR. GOLD: I mean Mr. Carson now wants to file a  
18 motion for summary judgment on the counterclaims when he's  
19 withheld crucial evidence that has left us severely prejudiced  
20 in terms of information we're seeking with regard to  
21 prosecuting the counterclaims against his clients.

22          So I have a problem with that. And I have the same  
23 problem with regard to the employment cases.

24          He seems to be benefitting from the Court's preclusion  
25 order that he can't use this information. On the other hand,

1 we need this information desperately. The summary judgment  
2 deadline is fast approaching, and I just think he's gaining  
3 some unfair advantage by having taken this position where he  
4 steadfastly violates court orders and deadlines and et cetera.  
5 So I --

6 THE COURT: Mr. Gold, I hear you. I mean, at bottom,  
7 that was the purpose of the hearing today. It wasn't just a  
8 status conference. It was a sanctions hearing. I'm looking to  
9 alleviate prejudice. I'm looking to keep the case moving. I'm  
10 looking to resolve some of these issues.

11 MR. CARSON: Can I respond to what Mr. Gold just said,  
12 Your Honor, please?

13 THE COURT: No. I understand why you want to,  
14 Mr. Carson, but I'm concerned we're just going to get into a  
15 back and forth about what did and didn't happen.

16 MR. CARSON: No. I just wanted to point out one  
17 thing, is that defendants have never served discovery requests  
18 to me in connection with their counterclaims, not one. Not one  
19 interrogatory, not one document request, so --

20 THE COURT: Well, you know --

21 MR. CARSON: -- I don't know how I could be in  
22 violation of not giving information subject to the  
23 counterclaims when they're never submitted anything.

24 MR. GOLD: Your Honor, it's electronic discovery that  
25 we need. That's the discovery.

1           THE COURT: I hear you. I hear you. I understand the  
2 issue -- the distinction.

3           I've covered what I think was sort of teed up by the  
4 order to show cause and the various issues. I need to take a  
5 few minutes to just think about what I want to do about them,  
6 and so we're going to take a recess for -- we'll call it 10  
7 minutes. So we'll be back at 11:45.

8           Here's what I'm going to do. I'm going to leave the  
9 meeting going and turn off my camera and mute myself. You guys  
10 can do the same.

11           Mr. Gold and Mr. Walton, if you have some desire and  
12 need to talk to each other now since you're co-defendants, I  
13 can set up a breakout room, or you can just step away and call  
14 each other. You tell me.

15           MR. WALTON: We can step away and call each other.

16           MR. GOLD: We'll call each other.

17           THE COURT: Okay. That's fine.

18           Let's go off the record now, and we'll take a recess.  
19 Please be back at 11:45. Okay?

20           (Recess at 11:38 a.m. until 11:57 a.m.)

21           THE COURT: I've had a chance to think about this.

22           I think that the record is pretty clear here that the  
23 plaintiff and Mr. Carson probably more directly has not  
24 complied with my orders on discovery in the case and has also  
25 not been diligent in fulfilling obligations for e-discovery in

1 this case in particular, you know, and it's not clear to me  
2 that he fully understands that or what the obligations are.

3           So here's what I want to do. I do think some -- I  
4 think sanctions are appropriate. I think that the record shows  
5 that there was at a minimum a reckless disregard if not a  
6 willful disregard of my orders. And so I do think a contempt  
7 finding is appropriate well. But, you know, I want to somewhat  
8 mitigate it, and I'm most interested in moving the case forward  
9 and getting things done in a way that's both expedient and  
10 fair.

11           So Mr. Carson had said he thought he could be done  
12 with the production of text messages and audio files in  
13 relatively short order. That's going to be done by December  
14 the 8th, which is next Tuesday. And Mr. Carson, you're going  
15 to certify that it's been done on the docket.

16           Plaintiff needs to engage an e-discovery vendor in  
17 this case. It's clear to me that, I mean, Cornerstone is just  
18 not able to fulfill that obligation. Again, if you all want to  
19 stipulate and talk to Cornerstone and then stipulate that  
20 Cornerstone is going to fulfill that role, I'm willing to have  
21 that happen, but there needs to be an e-discovery vendor who is  
22 specifically engaged in this case. And it's plaintiff's  
23 obligation to do that because it's her discovery burden.

24           So I want a report by next Tuesday, December the 8th,  
25 that plaintiff has engaged an e-discovery vendor. I want to



1 know who it is. And want to know the process that's been put  
2 in place with that e-discovery vendor to obtain the universe of  
3 potentially responsive documents.

4 And so, again, that will come in by way of  
5 certification on the record on the 8th.

6 With respect to some of those issues that the  
7 e-discovery vendor is going to have to tackle, there's  
8 Telegram. I want -- Mr. Walton, I want you to provide the  
9 information about the desktop client to Mr. Carson, preferably  
10 today, on how to pull down Telegram.

11 I want -- this may be somewhat new to the vendor,  
12 whether it's Capsicum or Cornerstone or someone else, but I  
13 want a report by next Friday, the 11th, on what the vendor has  
14 determined or what you, Mr. Carson, have determined is  
15 accessible from Telegram based on your exploration of that  
16 desktop client. And then I want a production of accessible,  
17 responsive Telegram data by December 18th, which is two weeks  
18 from today.

19 And for each of those deadlines, I'm going to get the  
20 report on the 11th, and then the 18th I want a certification  
21 from the plaintiff that responsive accessible Telegram data has  
22 been produced.

23 And again, I'm saying responsive, Mr. Carson. It's  
24 not every message that's in Telegram. But if it's responsive  
25 and relevant in this case, I want it produced.

1           With respect to the documents that were redacted, and  
2 I gather they were redacted based on whatever confidentiality  
3 restrictions Cornerstone's laboring under in the trade secret  
4 case, I want that universe of documents, the unredacted  
5 versions, to be provided to the new vendor.

6           I want a report that that has happened by next Friday.  
7 And I want -- you know, again, that should be certified,  
8 that -- by next Friday, the vendor has those materials.

9           And then I want a production made by December the 18th  
10 of that material. I'm not saying there can't be any redactions  
11 because I don't know what's in those documents. But  
12 Mr. Carson, if you're going to redact stuff from that  
13 production, you either need to confer with Mr. Walton and  
14 Mr. Gold about it and talk about things that you referenced,  
15 for instance, pictures that may be inappropriate to produce or  
16 things like that. I don't know if any of that is in these  
17 Twitter DMs and Instagram DMs and things like that. If there  
18 is and you talk to them and get an agreement, that's fine. You  
19 can redact that. Otherwise, if you have a basis, a legal basis  
20 to redact something, you need to provide them with a log of the  
21 redaction that you've made as well.

22           And I want that production done by the December 18th,  
23 and I want a certification on the docket.

24           I recognize that this may prompt the defendants to  
25 want to reopen some of the depositions that they've taken based

1 on the information that gets produced to them.

2 By December the 23rd, I want the defendants to tell  
3 Mr. Carson if there are any depositions that they propose to  
4 reopen based on information that has been produced to them.

5 If you guys can reach agreement, then that's fine. If  
6 you can't reach an agreement, then by January the 4th, I want a  
7 motion from the defendants laying out their good cause from  
8 what has been produced recently to reopen the depositions. I  
9 want you guys to work in good faith on that issue. And so I'm  
10 telling you now that if I get a motion on that issue as to  
11 whether or not there's good cause to reopen a deposition,  
12 whoever is the prevailing party, the loser is going to pay for  
13 that motion. So hopefully you guys can work it out amongst  
14 yourselves.

15 And if a deposition is reopened, if there's good  
16 cause, and if you guys can't work it out amongst yourselves,  
17 then I'm going to order the plaintiff to pay for that  
18 deposition, including the time spent preparing and taking it by  
19 the defendants.

20 MR. CARSON: For what deposition, Your Honor?

21 THE COURT: Any deposition that is reopened as a  
22 result of information that is produced as part of this process,  
23 Mr. Carson. So if there's information that gets produced now  
24 that gives the defendants good cause to reopen a deposition,  
25 then particularly if it comes to me, then I'm going to order

1 the plaintiff to pay for the defendants' time preparing for and  
2 taking that deposition because they're having to do it a second  
3 time.

4 And then as I said, I'm finding that contempt is  
5 appropriate here. I think that generally with contempt what  
6 courts do is -- or not generally, but often what they do is  
7 they impose a monetary penalty that is intended to ensure  
8 compliance with their orders.

9 I'm going to do that here, but I'm going to suspend  
10 it.

11 So I've put these deadlines in place. To the extent  
12 that these deadlines don't get met, then the contempt sanction  
13 is going to drop in. And it's going to be \$50 a day until  
14 there's compliance.

15 Mr. Carson, if you run into problems with compliance,  
16 this is not a situation where it is better to beg for  
17 forgiveness. This is one where you need to ask for permission.  
18 So if there's a problem, you can -- it doesn't have to be a  
19 formal motion. Okay? Letters are fine on this issue. But you  
20 need to get a letter in advance and tell me what the problem  
21 you're encountering is so I know and I can modify the contempt  
22 sanction accordingly. Okay?

23 MR. CARSON: Yes.

24 THE COURT: I mean, if you're working in good faith  
25 and I see you're running into legitimate obstacles, I'm willing

1 to hear that out. But if you blow past these deadlines, then  
2 I'm not.

3 MR. CARSON: Okay.

4 THE COURT: And the last thing, and again, this goes  
5 to sort of the contempt and sanctions issue. Well, I guess I  
6 should say we outlined to some extent on the production of text  
7 messages, that they will be produced subject to confidentiality  
8 provisions. And I will outline those. We outlined them on the  
9 record. I'll outline them in a little more detail in my order  
10 so that you have them consistent with what we've discussed on  
11 the record here.

12 And then the last thing is, Mr. Carson, I'm troubled  
13 by what seems to be some lack of facility with some of the core  
14 e-discovery concepts that have given rise to where we find  
15 ourselves here, and so I'm going to order you to take six hours  
16 of CLE on e-discovery -- really e-discovery basics. Those  
17 would be in addition to the CLE hours you need to take to  
18 fulfill your Pennsylvania Bar requirements. I want you to take  
19 those 6 hours by March 31st and get me a certification that  
20 you've done so.

21 So that's my order. Or I mean, that's my ruling.  
22 I'll reduce it to an order hopefully later today.

23 The last thing then that that leaves is summary  
24 judgment. You know, I think it's in my own interest at this  
25 point to push off the summary judgment deadlines a little bit,

1 because the alternative is I'm going to get summary judgment  
2 motions and then a bunch of supplements. And frankly, I'm  
3 interested in reducing, not increasing, the amount of paper I  
4 get.

5           So what we're going to do given this schedule -- and  
6 the other thing, you know all this, there's not going to be a  
7 trial date any time soon. I mean, I don't know when I'm going  
8 to get you a trial date in this case, assuming that it gets  
9 past summary judgment.

10           MR. CARSON: Your Honor, will it be 2021 sometime, do  
11 you think?

12           THE COURT: Honestly, Mr. Carson, I don't know. I  
13 mean, some of that is going to depend -- I don't know when I  
14 can get you trials, trial dates. And then once I can, as a  
15 practical matter, you're going to be towards the back of the  
16 queue. And so I don't know once I can get people trial dates,  
17 maybe they'll start settling. But if they don't, you know,  
18 it's going to take me a while to work through that backlog.  
19 And that includes I've got some cases that I picked up both  
20 from Delaware and New Jersey that need to be tried in those  
21 districts.

22           And so it could be. It could be 2022. I'm not saying  
23 it will be. It's certainly not going to be -- there's no way,  
24 for your planning purposes, it's going to be in the first half  
25 of 2021. I'd be surprised, very surprised, if it's in the

1 third quarter of 2021. So you're probably looking at the back  
2 half of 2021, the back end of 2021 or 2022 as a practical  
3 matter.

4 MR. CARSON: I'm sorry, Your Honor. Is the reason why  
5 we're in the back of the queue because criminal trials are  
6 going to go first?

7 THE COURT: No. It's because I'm going to take people  
8 up in the order in which they were trial ready in all  
9 likelihood.

10 I'm not saying that definitively. For instance, it's  
11 not inconceivable that I'll slot in some cases that are one-  
12 and two-day trials ahead of longer ones that might have been  
13 waiting longer, but I don't have the sense that this is going  
14 to be a case that's a one- or two-day trial if it goes to  
15 trial.

16 So, you know, the logistics of slotting in a longer  
17 trial are harder. And even once I start trials, Mr. Carson, I  
18 don't know that we're going to be just every judge at the  
19 courthouse willy-nilly able to schedule trials and call a jury.  
20 Right? We might be having to share space and things like that.

21 So all of that is going to have an impact. You know,  
22 it's not singling you out. It's where we are with everybody  
23 this day and age, unfortunately.

24 MR. CARSON: I understand. Thank you.

25 THE COURT: So, you know, I don't want to let this

1 slip too far, but there's a fair amount to do. I don't know  
2 how many depositions there are to be reopened. Hopefully not a  
3 lot. I mean, hopefully a lot of this stuff that will be  
4 produced is, you know, part and parcel of what has already been  
5 explored at depositions. And I don't want the defendants  
6 gilding the lily here in terms of what needs to be reopened. It  
7 has got to be significant that you found something, not just  
8 that you found something in order to justify reopening a  
9 deposition.

10           So let's have summary judgment be January 29. Okay?  
11 And I'll modify the scheduling order. That will give you some  
12 time to work on the motions based on what you know now. It  
13 will give you some time to get things scheduled to the extent  
14 there is stuff that needs to be scheduled. And it will give  
15 you time to, you know, get back transcripts.

16           I don't think these depositions, to the extent they  
17 get reopened, are going to be real long, and so I think you can  
18 get the deposition transcripts turned around pretty quickly and  
19 get them incorporated into whatever you're doing in the way of  
20 summary judgment.

21           All right. I think that covers everything.

22           Mr. Carson, anything else you need to bring up?

23           MR. CARSON: Yes. Just I don't think we addressed --  
24 at the last hearing you imposed -- you said that I had to pay  
25 for the cost of their motion.



1 THE COURT: Yes.

2 MR. CARSON: And I think after we look at the record,  
3 it's pretty clear that they filed a motion inappropriately.

4 Their motion was based on discovery that both parties  
5 got at the exact same time and that at no time did anyone  
6 ever -- and I filed a motion for reconsideration on this issue.

7 No one ever contacted me to even tell me -- I found  
8 out about the deficiencies in their motion for sanctions. They  
9 didn't --

10 THE COURT: I think -- Mr. Carson, I think a lot of  
11 what was there and the reason I entered the order that I did  
12 was because I concluded that you had not been compliant with  
13 your discovery obligations. I think the record today is  
14 consistent with that. So I'm going to deny that aspect of the  
15 reconsideration as well.

16 MR. CARSON: All right.

17 THE COURT: Okay?

18 MR. CARSON: When we look at it, there wasn't even  
19 enough time between the time that we got the discovery and the  
20 time they filed their motion, there wasn't even enough time in  
21 hours to even complete the -- the --

22 THE COURT: But Mr. Carson, again, this is one of  
23 those things where you can't beg forgiveness, you've got to ask  
24 permission. And I concluded at the last hearing that you had  
25 violated both discovery obligations and my orders. I think the

1 record still bears that out, so I'm not going to reconsider.

2 MR. CARSON: Okay.

3 THE COURT: Okay?

4 Anything else?

5 MR. CARSON: Oh.

6 THE COURT: Yes?

7 MR. CARSON: Your Honor, I did write a couple things  
8 down to ask you about.

9 Can you put as part of the order that defendants have  
10 to identify -- I don't even know what redactions they're  
11 talking about. Can they identify the documents that they're  
12 talking about that they want unredacted?

13 THE COURT: I think they have, but that's fine.  
14 Mr. Walton, tell Mr. Carson --

15 MR. WALTON: We can do that.

16 THE COURT: -- what the Bates range is. Give him the  
17 Bates range. Okay.

18 MR. CARSON: And then the other thing is, is I think  
19 the only outstanding issue after today are the text messages.

20 If I can figure out a way to work with Cornerstone to  
21 get those produced, can I attempt that?

22 THE COURT: I don't think it's the only outstanding  
23 issue.

24 Again, as I said, if you all can agree to use  
25 Cornerstone for that, that's fine. There's the pictures -- did

1 I not say -- mention the text messages when I went through  
2 this? The text messages need to be -- I'm sorry. The images  
3 and audio files need to be done by next Tuesday.

4 MR. CARSON: Right.

5 THE COURT: The text messages, I need a report from --  
6 if you can do it with Cornerstone, great. I want a report as  
7 part of what you're getting me from the vendor, if you get a  
8 new vendor involved, by December the 11th. That should include  
9 the report on text messages as well.

10 And then I want the text messages produced by the 18th  
11 as well. And that should get certified.

12 Mr. Carson, if you can work with Cornerstone to  
13 obviate the need to get a new vendor in place for any of these  
14 issues and you can get the production out -- my ultimate goal  
15 is not a full employment act for e-discovery vendors. It is to  
16 get the relevant materials out to the defendants.

17 And so if you can find a way to work with Cornerstone  
18 to get that done either by engaging them directly in this case,  
19 because that may have some cost savings, or by just persuading  
20 them to do it, it's fine. Okay? And then that should be part  
21 of the certification I get on Tuesday then, on the 8th, because  
22 the order is going to require you to certify that you've gotten  
23 me a vendor and what the process is to obtain and produce the  
24 documents.

25 If the certification is I've spoken with Cornerstone

1 and either engaged them or they've agreed to produce all this  
2 stuff, that's fine with me. Okay?

3 MR. CARSON: Yes, Your Honor. Thank you.

4 THE COURT: Okay. Mr. Walton, anything else?

5 MR. WALTON: Yes, Your Honor. I have to ask this just  
6 for the benefit of my client.

7 Are we -- is the Court planning to order our costs and  
8 fees for our participation in the events including -- you know,  
9 subsequent to your prior order granting the fees including this  
10 hearing?

11 THE COURT: No.

12 MR. WALTON: Okay.

13 THE COURT: I'm not. Okay? They were different  
14 issues. This was -- as I said, this was -- I mean, obviously  
15 we got into a lot of discovery, but it was also motivated by  
16 the issue of compliance with the request for daily updates.  
17 And I don't think that was quite as much of an issue for your  
18 client as it was for me just from sort of a juris prudential,  
19 sort of court administration standpoint, so no.

20 MR. WALTON: Okay. Thank you, Your Honor.

21 THE COURT: Yep.

22 Mr. Gold, anything else?

23 MR. GOLD: No, Your Honor. Thank you very much.  
24 Appreciate it.

25 THE COURT: Thanks everybody.

1                   We're going to stand adjourned, and I'll look for your  
2 updates.

3                   Thank you. Have a good weekend.

4                   (Proceedings concluded at 12:20 p.m.)

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8                   I certify that the foregoing is a correct transcript  
9 from the record of proceedings in the above-entitled matter.

10

11 *Ann Marie Mitchell*

12 Ann Marie Mitchell, CRR, RDR, RMR  
13 Official Court Reporter

14 Date: 11th day of December, 2020

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